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After Lunch (2-30 p.m.)

IV.—VOTING OF DEMANDS FOR GRANTS FOR 1934-35.

DEMAND XII—ADMINISTRATION OF JUSTICE—RESERVED.

The Hon. Diwan Bahadur Sir M. KRISHNAN NAYAR:—"I beg to move—

'that on the recommendation of His Excellency the Governor the Government may be granted a sum of Rs. 82,81,900 under Demand XII—Administration of Justice—Reserved'."

* Mr. M. S. SRESHTA:—"I beg to move the cut motion standing in my name, viz.—

'that the allotment of Rs. 81,900 for High Court Judges and Registrar—Pay of officers—be reduced by Rs. 100.'

I find that practically I shall have to traverse the same ground covered by me at the Budget discussion last year. So far as I can see the drawbacks in the administration of justice, which were pointed out both by myself and other speakers, have not been corrected and no examination appears to have been made of the points raised on the last occasion. That is some excuse for me for going over the same ground this time.

"First of all, I wish to deal with the question of separation of judicial and executive functions. For years past there has been agitation that executive and judicial functions should not be in the same hands. So far as I know, this system is not found in any other part of the world. Even in British Crown Colonies which are not independent, this system does not exist. I pointed out last year that in our neighbouring country of Ceylon the system of administration of justice is much better than the system here and the following are the words, in which the system was referred to in a certain book:—

'The system of administration of justice in Ceylon is very simple and so judicially we find that it will deserve to be taken as a model system and it is the best system of administration in all branches that the British Empire has to-day.'

"Rao Sahib V. I. Muniswami Pillai in a recent speech referred to the fact that in the Federated Malay States, one of the Crown Colonies the cases are quickly finished. In this country we know that the administration of justice is very good but it is very slow and costly. I personally know that cases drag on from month to month and year to year, till the patience of the litigants is exhausted. This often results in the parties coming to a settlement, because they find that this saves them much expenditure. But settlement induced by delay is not the correct thing. I think that there should be a system whereby cases may be settled in some sort of conciliation courts, in which the judges may interfere and tell the parties on whom the burden of proof lies and indicate to them what decision would be arrived at. According to the present system it is not proper for the judge to interfere and try to settle the case, because if he does so even with the best of intentions

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the parties perhaps may misunderstand him and feel that he is biased. If there are conciliation courts, where the judges could tell the parties how the case would probably end and if we have a system whereby the same judge would not be compelled to try the case, I feel that justice could be very much expedited. I know several cases, where the parties think that, after an expression of opinion by the judge as to how the case might end and how it could be settled, it is not possible for them to obtain justice. But whatever it may be, whether it is possible to establish the procedure such as I have described—I do not think such procedure is to be found in any courts at present—I think the case is very strong for the separation of judicial from executive work. The same person should not be the Magistrate and the Revenue Officer. The system, whereby magistrates are made subordinate to the Collector of the district and also in a way subordinate to the Police is a very vicious one, and the sooner it is ended the better it will be. It has been pointed out by an hon. Member that some cases are postponed from day to day to be decided during the course of the jamabandi. Criminal cases are taken up after the Revenue work is over and that means a lot of delay both for the lawyers and the parties and great deal of expenditure is involved. Therefore, it is desirable that the courts should be stationary and parties should not be made to attend courts from place to place. I would suggest that District Munsifs themselves may be appointed as magistrates or some such system may be devised whereby the trial of both civil and criminal cases can be in the same hands. This system is found in England and in France. I do not see why such a system should not be introduced here. Of course Governments are conservative and they think this is an idea, which could not possibly be carried out and would involve heavy expenditure. There will have to be a large number of judges when this system is adopted; but there will also be speedier justice, which will be much more appreciated by the public. Such a system will not be as costly as it is now. Lawyers will not have to go about from place to place and they may conveniently attend to both their civil and criminal cases in one and the same court. Now, the civil court is situated in one place and the criminal court in another place and it is very difficult for lawyers to be going about from one place to another. Therefore, I think the Government would do well to consider whether it is not feasible to introduce what has been introduced and found satisfactory in other countries.

“As regards recruitment I have been urging the desirability of holding competitive examinations for recruitment to the district munsifs' posts. At present, the recruitment is undertaken by the High Court. We have of course confidence in the High Court. All the same it is not possible for them to act in an entirely judicial capacity; it is not possible for them to balance the merits of the different candidates for appointment. Therefore, we often find that the best men are not selected. It was said some years ago that persons selected as district munsifs were generally the inefficient members of the bar. It is not the case now. But even now, if you want to select men for the district munsifs' posts from among men who have practised at the bar and have

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already shown their talents at the bar, you will not be able to select the best men. They would not agree to accept a post which carried lesser emoluments than they earned as practitioners. If you appoint men when they are young, after perhaps two or three years' practice, it would be possible to have much better men than at present and that is the reason why men are selected by examination in certain countries. That is the system that is obtaining in the colonies where both criminal and civil judicial work is done by the same person. In France also, as hon. Members are aware, the system is the same. At an early period a member of the bar has to elect between being a judge and practising at the bar. If after an examination some persons are selected as judges, they are judges for the whole of their lifetime. In France the judges as a rule do not rise to a salary of over Rs. 600 or Rs. 700 per mensem though some of them get higher salaries; nevertheless they get a very high type of men as judges, the reason being that they are selected judges at an early age. Similarly also, it would be possible to select the very best talent if we have a system of examination for recruitment. In France the recruitment is made in this manner. About 75 per cent are selected by examination and the rest are selected by nomination; and a similar system might be adopted here.

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“Then, Sir, in regard to the execution of decrees: In regard to the administration of justice, we have very little to complain. It is of course very slow, but though slow, at last justice is given to us. But, in the matter of execution of decrees, I think there is considerable delay and consequent hardship. In the service of summons, warrants and so on, it is well known that, unless the process-server is given a small sum of money, he will not carry out the work. I pointed this out to the Hon. the Law Member last time and he replied that, in a matter of corruption like this, both the parties are to blame. I think by able administration, it is possible to check the evil. The great drawback now is that the work of execution of decrees is in the hands of officers who are subordinate to judges and munsifs and these judges and munsifs have no experience of administration. They may be very good judges, but they have little experience of administration. It does not follow that in the matter of administrative work, the man who is a good judge should also be a good administrator; and the result is, as a rule, you find that the judges are so busy that they have no time to attend to the administrative side of their work. What I would therefore suggest is that, as obtains in certain other countries, the work of execution of decrees should be placed in the hands of a special set of officers, not subordinate to the judges, and that they should be subordinate to a central head who will see that the work is done properly. If that is done, I am sure the work of execution of decrees will be greatly improved.

“On the last occasion, I suggested that a committee might be appointed to go into all questions raised by me and see in what manner the administration of justice might be improved. But, I am sorry to note that no committee has been appointed so far, and I believe, no

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examination has been made of all the various drawbacks. I trust this time at least more serious notice will be taken of what has been said here and a small official committee will be appointed to go into the whole matter, to take evidence and to see whether the position cannot be improved.

“I would like also to mention something about communal representation. I have to point out that the Indian Christian community is not adequately represented in the higher branches of the judicial service. I believe, there is no Indian Christian judge at present in any capacity either in the High Court or the lower courts in Madras; and there is not even a single District Judge belonging to the Indian Christian community, and there are a few district munsifs. I submit, Sir, that the usual communal proportion has not been maintained in the judicial service. This cannot be due to inefficiency or to illiteracy, because the Indian Christian community leads, I believe, after the Brahmans, the other communities in the matter of literacy; and wherever there is fair field and no favour they come very near the top. Therefore, I do not see any reason for the fact that in the judicial service the Indian Christian community is not adequately represented. I trust this matter will be carefully examined by the Hon. the Law Member. I believe representations have been made to him before and I trust he will consider all the representations and come to favourable conclusions.

“Last of all, Sir, I have to mention something about the High Court. The High Court, as my hon. Friend, Mr. Pannirselvam has stated, is sacrosanct and I do not like to say anything against it. As a matter of fact, the High Court deserves all the praise. It is a model High Court, and the only thing against the High Court is perhaps that it is too expensive. Every one has confidence in the High Court and it is desirable that that confidence should be retained and that no High Court Judge should behave in such a manner as to forfeit the confidence of the public. I wish to point out that quite recently, a Judge of the High Court has taken up a very intensive propaganda work in a movement which is highly controversial. If a High Court Judge takes up some such thing as the prevention of cruelty to animals in which there is no controversy we will have nothing but praise for him, but if on the other hand, he takes up a question in which public opinion is sharply divided and in which religious susceptibilities are apt to be wounded, we say that that is a wrong thing for him to do and it is better for a High Court Judge to keep away from such a movement. At the same time, I must admit that this High Court Judge commands the esteem of the public and is greatly respected, and I am sorry that he has taken a very strong part in the movement called the Birth Control movement. (Khan Bahadur Mahmud Schammad Sahib Bahadur: ‘Is he doing that in his official capacity?’) My hon. Friend, Mr. Schammad, wants to know whether he does that in his official capacity. It must be obvious that he is not doing it in his official capacity, but what I say is that, if officials take part in such movements, it is likely to cause

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a great cleavage among the various sections of the public. It is not only necessary for the High Court Judge as well as other Judges to do justice, but they must appear to do justice; and how can a High Court Judge appear to do justice when he takes up a question on which opinion is sharply divided? I feel very much hurt in the matter. (Mr. Srinivasa Ayyangar: 'Why?') I think, it ought to be obvious why. I am sure Catholics as a body feel very much hurt about the matter. And I trust the Hon. Judge, who commands the esteem and confidence of the public, will give up this propaganda and I hope Government will also tell him plainly that it is not proper for him to interfere in a matter of this sort, because what he does may be misunderstood by the public."

Rao Sahib V. I. MUNISWAMI PILLAI:—"On a point of order, Sir, does this come under the purview of administration of justice?"

* The Hon. the PRESIDENT:—"It may not come, but it has got some relationship with the High Court Judge and the propaganda work that he is doing."

* Mr. M. S. SRESHTA:—"What I wish to say is, it is necessary that even High Court Judges should not take part, not only on the Bench but also outside, in activities of this kind which would divide the public and in the end produce an impression among the Muslims, Catholics or other sections of the public who are interested in the matter, that he is adverse to them. Sir, Catholics have been described as old-fashioned idealists. I am afraid I am an old-fashioned person. Now, if we give up all our old-fashioned ideas, we shall have to give up the civilization which rests upon those ideas and we will have to create a new civilization as it is attempted to be done in Germany and Russia. This may seem sound to some, who may think that those who followed old traditions such as Catholics, Muslims and Sanatanists, should all be scrapped. But, what I say is, it is not for the High Court Judge to take up a question like this and speak on it in such a manner that the public are likely to be misled. You must also remember, Sir, that a High Court Judge commands considerable influence and his words carry considerable weight and he should hold the scales even. There are several other matters in which High Court Judges can interfere without any suspicion being felt by the public that justice would in any way be interfered with.

"I am now coming to the end. There is a personal matter about which I should like to say something. Sir, this is the last time the Hon. the Law Member will be here to reply to the discussion on this subject. We may have differed in our opinions in various ways, but I think we will all agree that he has been extremely courteous and sympathetic and that whatever suggestions we have made to him, have all received at his hands careful examination, such examination as was necessary and if ultimately he could not carry out all we wanted, it is because it was not within his power to grant what we wanted. He has

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always been a gentleman of gentlemen; he has treated the House with the respect and consideration due to it and I therefore regret greatly that we will not see him again on the Treasury Bench during the next Budget discussion and we wish him long life. There is also one other matter which I forgot to mention and that is, before he lays down his office of Law Member, I trust he will appoint the committee which I have suggested earlier in my speech. I do not want any Member of the Council to be on the committee; it might be even a committee composed of officials. If I say that Members of the House ought to be on the committee, it might be thought that we are anxious to get travelling allowance and so on. But, let that committee be an official committee and let it go into the whole matter carefully. If the Hon. the Law Member appoints such a committee he will leave behind him a great legacy and will round up the good work he has already done."

* Mr. A. B. SHETTY:—"Mr. President, Sir, my hon. Friend, Mr. Sreshta, has mentioned in his speech about the delay in the disposal of suits and appeals and the difficulties experienced in the matter of the execution of decrees and he has suggested that a committee should be appointed for the purpose of going into the question and making suggestions for remedying those defects. Sir, my hon. Friend may be aware that a committee called the Civil Justice Committee was constituted about ten years ago to enquire into and report as to what could be done to provide for the more speedy, economical and satisfactory despatch of business transacted in the courts and also for the more speedy, economical and satisfactory execution of processes issued by the courts. In spite of the findings of this committee and the action so far taken by the Government in this matter, it is regrettable to note that matters have not improved much. If we look at the statistics of civil courts for the year 1932, which is the latest for which they are available, we find that the same tale is repeated year after year. There is delay in the disposal of suits and appeal and the delay has increased again in the year under report. In Munsif Courts there is a decline in the number of original suits disposed of and there is an increase in the number of original suits pending in these courts. In Sub-Courts there is a decrease in disposals in respect of all suits and the average duration of contested suits has risen to 474 days.

3 p.m. "In District Courts, the average duration of contested suits has risen from 398 to 544 days and in the High Court the average duration of contested suits has risen from 651 to 754 days and of uncontested cases from 125 to 174 days. In the matter of executions we find from the report that satisfaction was obtained in full in 13.23 per cent of the applications disposed of. Satisfaction was obtained in part in 11.70 per cent of the applications disposed of and the number of wholly infructuous applications rose from 285,046 to 298,742. The litigant has to pay heavy court-fees and in cases in which there are one or two appeals he has to spend 50 per cent or more of the amount in dispute in advance. He has to undergo lot of worry and expense on account

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of protracted litigation and after all, in many cases, he is not able to realize the fruits of his hard won victory. If 75 per cent of the executions filed in anyone year become wholly infructuous, the game is hardly worth the candle. As Sir Tej Bahadur Sapru has said the time has come when some drastic steps should be taken to revise the whole system of execution of decrees and placing it on a more satisfactory footing. The Civil Justice Committee has stated that opinion is universal that one of the main sources of delay in the disposal of suits and original proceedings as well as of appeals and execution petitions is the delay in the service of processes. For the efficient administration of civil justice, satisfactory service of processes is no less essential than the competence and honesty of tribunals. If a reliable and efficient agency for the service of processes can be devised, it will save a large part of the time of the courts. I think, Sir, that the Postal department is not utilized to the extent that is desirable for the service of processes. If simultaneous service of processes is done through the Postal department and through the process servers, it will help to bring about better results because both parties cannot act in collusion. It will be desirable also to see that the process serving establishment as well as amins do a sufficient number of personal services. Otherwise, they should be punished.

“ Another of the chief causes of the delay in the disposal of suits and appeals is the accumulation of arrears in all courts from the highest to the lowest. Government should not grudge or hesitate to create temporarily the necessary number of additional courts and Judges to clear off these arrears. The file of the courts should be reduced to such a condition that a Judge can normally dispose of a year's institutions within one year. Another way in which the speedy disposal of cases can be effected is by enabling the judicial officers to take up contested cases, when the day's work begins. In the High Court, much of the routine work has been delegated to a special officer and the Judges have been relieved so that they can attend to the disposal of cases. In a similar way, in the mufassal, the Judges should be relieved by the delegation of the preliminary work to the sarishtadar or some other duly qualified officer.

“ There is a complaint that the Insolvency Act gives facilities for dishonest debtors to cheat the creditors. A proper enquiry should be instituted into the working of the Insolvency Law so that the relief given to the debtors is not abused in such a way as it has been alleged. I think it is necessary that we should have a permanent statutory body to suggest from time to time to Government the necessary changes and improvements to be made not only in Insolvency Law but all law whether substantive or adjunctive, so that the defects and difficulties found in administering it may be remedied. The High Court Judges draw attention to such matters in their own decisions, but this is not enough to draw the attention of Government to the amendments necessary to be made. Before concluding, I must say a word about what my hon. Friend, Mr. Sreshta, has said at the end of his speech.

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I am sorry he has thought it fit to drag in the question of birth-control and protest against the propaganda done by one of the High Court Judges in connexion with this matter. Judges of the High Court must be free to have their own opinions and we have no right to prevent them from taking part in any social or philanthropic or propaganda work which they feel they must do so long as their legitimate work in the court does not suffer on account of it. It is hardly fair to have spoken in the way he has done about a respectable Judge of the High Court."

* Mr. DANIEL THOMAS:—"Mr. President, Sir, my hon. Friend, Mr. Sreshta, in his opening remarks said that practically this year he has to repeat what he has said last year because he finds that things remain practically unchanged. I am afraid if that be the standard of speaking, we shall have to repeat our speeches not only from 1933 to 1934, but for decades and decades because I do not see any prospect of immediate change in the administration. Year after year, the same speeches are made and the same resolutions are moved and as a matter of fact we find these things continue unchanged. Members of Council may speak but justice is administered by our rulers in the same old way. Therefore, I am only drawing the attention of the Hon. the Law Member that, after a strenuous period of public service, he may perhaps have to lay down the reins of his high office in a short time and that before he lays down the reins, he would be pleased to make some change for the better in the real and practical administration of justice. I may take this occasion also to express our sincere admiration for the Hon. the Law Member for the way in which, in spite of administrative difficulties, he has had the patience and the courtesy of listening to our arguments and to hear representations apart from the question as to the degree and measure in which he was able to give effect to the same.

"I may say that so far as criminal justice is concerned, the subject in which I am mainly interested, all is not well. If we compare the report of administration for this Presidency for the year 1933, and which has been just now published, with the figures for 1931-32 and 1932-33, we find in several respects the conditions that are found in the present year's report are worse than in the previous year. We find that crime has been on the increase. The total number of persons convicted rose from 274,874 to 299,896, an increase of nearly 25,000. We also find that there has been to a certain extent increase in juvenile crime and we also find that in the way in which the juvenile offenders are dealt with, the use of the provision for discharge on probation of good conduct has not been increasingly used as the public would expect. In respect of the number of persons who have been discharged on probation of good conduct under section 562, I find there has been a considerable decrease this year. In the present year, I find that the number of cases coming under section 562 decreased from 2,467 to 2,111. I believe that this section 562 of the Criminal Procedure Code was introduced to reform the administration of criminal law by a free use of it and that it was introduced because of the results

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that were obtained therefrom by the administration of this provision in England. Though this provision was introduced some years ago, still we find that adequate use of this section has not been made in the administration of criminal justice. Persons of ordinary honesty and temperament, in a moment of passion or in a moment of thoughtlessness, are led to commit a casual offence. Sentencing such persons to prison for short periods is undesirable for society. For, by doing so, far from protecting society against such persons, we will be letting loose upon society, a casual and respectable person who might have been turned into a good citizen but who has been turned into a confirmed or perhaps desperate criminal. Our experience of short sentences is that it is the very worst thing that can happen to any individual. All his respectable associations will be wiped out and he will be turned out with all his better instincts smothered if not killed. It was in order to give a chance to such men by which they can be careful to avoid a repetition of casual lapses into crime that this was introduced, and I am very sorry that year after year instead of expecting progress, there has been a decrease in the use of section 562.

“ There is one other thing which I should like to refer to. It is one of the things with reference to the administration of justice in England where the public take very great interest in the case of criminal trials for murder. In fact, in the course of the trial itself, there is very keen interest taken by the public as regards the innocence or guilt of the alleged offender. Though of course the press is prohibited from expressing any opinion as regards the nature of the evidence offered or the conclusions to be arrived at, still, the press gives a very good report of the proceedings at the trial. After the judgment in a case has been delivered, the matter is taken up to the Home Secretary for the purpose of modification of the sentence. In England, the authorities seem to devote a good deal of attention to the propriety of the sentences inflicted by the court, to find if there is any possibility for a modification of the sentences. I am sorry to note that so far as criminal justice in India is concerned, in regard to capital punishment and sentences for transportation, the judge's word appears to be final. I know, the judges exercise very great care and discretion in the matter of the sentences they pass. But they are cribbed, cabined and confined in the matter of the infliction of the sentences by certain provisions of law. For example, in a case of murder, they have no other alternative except to pass a sentence of death unless they find extenuating circumstances. So, their discretion is limited to the letter of the law. But, as a matter of fact, if the cases of these condemned men are examined by an outside agency, the sentences might probably be less heavy. For example, the sentence in a premeditated and brutal murder case must differ widely from the sentence in a case in which the death was unpremeditated or casual. Common sense requires that the sentence in these two cases must differ substantially. I am sorry that so far as administration of justice in the courts is concerned, the Government do not seem to examine the cases at all and do not interfere. I am speaking subject to correction. I believe the Hon. the Law Member

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will tell us what exactly is being done in these matters within the four corners of his office. The public are not in a position to know these things. But so far as the results are concerned, we find that in very few cases the Government interfere and grant remission. I should like to know from the Hon. the Law Member what exactly is the procedure adopted and what consideration the Government gives to cases of appeals for mercy. When mercy petitions are received, it is open to His Excellency the Governor to interfere and there is also the final power given to His Excellency the Viceroy to give pardon. No figures of these cases are given. But we do not know of any cases in which this prerogative has been exercised by either His Excellency the Governor or His Excellency the Viceroy. I hope and trust that this aspect of the matter will be considered by the Hon. the Law Member.

“ Now I come to my pet subject, the jury system. Sir, year in and year out I have been speaking on the floor of this House about the jury system. The unsatisfactory character in which the jury system is working in the mufassal districts is the thing that is responsible for my making reference to it again this year. I do not talk of Madras City where I hear the system is working very well. I am glad to hear it. But as regards some of the districts with which I am personally concerned, I can say that the jury system does not work satisfactorily. It is not a case in which you can take the net result, say that in the great majority of cases it has given satisfactory results, and allow it to continue. This is a matter in which the life and liberties of the people are at stake. Under this system it is possible for rich persons through their influence to secure the verdict of the jury in their favour and obtain disproportionate and very severe punishments for those without influence. There is scope for the influential people to escape the just punishment due to their crimes and for old offenders and others getting punishments which the circumstances of their case do not warrant. I have heard complaints that once a man goes to jail and his name is entered in the books of the Police as a known depredator, they track him down for any subsequent offence in the village. The man is not given any chance to improve. No chance is given to him for *locus penitentiae*. No chance is given to him to lead a clean life. So, in order to avoid innocent persons being run down on account of the corrupt jury system and also in order that well-to-do persons may not escape the result of their misdeeds, the question of the jury system should be examined. Even if miscarriage of justice occurs in a few cases, this being a matter which goes to the fundamental well being of the society, it requires the most anxious consideration of the Government. In this matter again I will only say that the Government appear to be satisfied with a mere routine repetition of phrases in the administration report. In the previous year's report I find this reference to the jury system:—

‘ On the whole, the jury system worked satisfactorily. It was remarked that in some districts the jurors did not show a proper appreciation of the proceedings or dare to withstand outside influences.’

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I believe it is a sufficient condemnation of the jury system to say that the jurors did not appreciate the proceedings or that they had no power to withstand outside influences even in a few cases. Coming to the present year's reference to the jury system, the remark is found to be a somewhat modified one. It is stated there 'the jury system is said to have worked satisfactorily on the whole.' The Government perhaps seem to think that it is not wise to take it upon themselves to say that the jury system worked satisfactorily on the whole. They merely give us second-hand information from their subordinates. A report of the statistics of criminal cases for 1932-33 is put into my hands just now which says 'the Sessions Judge of Madura is however, of the opinion that the jury system is of doubtful utility and that the trial by assessors has nothing in its favour.' What I am submitting therefore is that, while it is too late in the day to say that the jury system should be altogether done away with, the Government ought to find a way to improve the system and the quality of the people who sit as jurors and get the District Judges to carefully watch the working of the system. When it is reported to them by the District Judges that the system is not working well in one place, they should not hesitate to withdraw it from that place. If the Government give instructions to the District Judges that in the cases where jurors are suspected to be corrupt due action should be taken, it will set a good example. If the public understand that any juror who is corrupt will be dealt with severely, that will go a long way towards improving the system. The quality of the persons chosen as jurors should be higher. There should be a careful consideration of the results of cases by the District Judges. In these two directions I request the Hon. the Law Member to be pleased to consider possible avenues of improving the system.

"Sir, I have one other thing to mention and that is the meagre provision made for travelling and subsistence allowances. We expect the jurors to be honest and above all outside influences. Just to ensure such a thing, it is necessary that they should be given proper travelling and subsistence allowances so as not to make them dependent upon outside supplies. I also find that in the case of jurors who are summoned from headquarters, no allowance is given. For instance, Sir, if a juror is summoned from Palamcottah to Tinnevely, no allowance is given, not even a day's allowance. This is a great hardship. Local jurors are invariably persons engaged in their daily avocations. For asking them to leave off those things and attend court, even though they are local men, you should give them at least day allowance.

"There is one other matter which concerns my own district and that is the jurisdiction of the munsifs' courts situated in the headquarters. Formerly there were two district munsifs' courts, one known as the Principal District Munsif's Court of Tinnevely and the other known as the Additional Munsif's Court at Palamcottah. These two courts were having fairly large jurisdiction and about two years ago as a measure of retrenchment, the Munsif's Court at Palamcottah was

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abolished. Then the whole file of the Palamcottah Munsif was handed over to the Tinnevely Munsif. This resulted in the Tinnevely Munsif having a heavier file than one single officer can cope with. Then what happened was that a number of suits pending with the Tinnevely Munsif were transferred to the court at Ambasamudram, which had not enough cases of its own. When the cases from Tinnevely were transferred to Ambasamudram, people of Melapalayam and other villages contiguous to the Tinnevely Munsif's Court, were obliged to leave the court nearest to them and go and appear before the Munsif at Ambasamudram. That meant great hardship to them. Recently, therefore, the High Court tried to make an alteration in the jurisdiction by bringing Melapalayam within the jurisdiction of the Ambasamudram Munsif. This was not a very satisfactory solution either. So, on the representation of the Bar Association the High Court cancelled this transfer and restored the *status quo ante*. This is very undesirable. I hope and trust that the Hon. the Law Member will move the High Court to re-establish the Additional Munsif's Court in Palamcottah.

"Then, Sir, one other matter and I shall have done. I cannot resume my seat without mentioning the inadequate representation of Indian Christians in the judicial service.

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"My hon. Friend, Mr. Sreshta, has pointed out that the representation of Indian Christians in the higher cadres of the judicial service is poor. Formerly there was an Indian Christian High Court Judge, and till very recently there was an Indian Christian Chief Justice of the Small Causes Court. But now as those officers are no longer there, it is high time that Government considered the question of giving Indian Christians a chance in the superior cadre of judicial service. I think the Hon. Law Member will realize that competent individuals are not wanting, and so there will be no difficulty in finding one who will discharge the functions efficiently. Therefore I hope he will give the matter proper consideration."

* Rao Bahadur C. NATESA MUDALIYAR:—"Mr. President, Sir, I am extremely thankful to Mr. Shetty in having finished his speech in five minutes, and thus giving an opportunity to the several hon. Members, as many as sixty-five who have given notice of cut motions under this Demand, to speak. I think there is a grievance, Sir, that suits are being delayed. As far as the High Court Judges are concerned, I am only sorry that they are overworked. Day in and day out they have to be pouring over files of at least of ten suits a day, as some cases are liable to be adjourned each day. They have to be sitting from 10-45 a.m. to 4-45 p.m. every day; they have to go through the evidence, hear arguments and counter-arguments, sift them, analyse them and give their decision. Sir, for us, Members of the Council, to be sitting here and listen to the speeches every day from 11 to 5 with an interval is a strain indeed and how much more should our Judges of the High Court feel? Surely at this rate their brain power will become deteriorated. (Laughter.) I mean they may feel exhaustion."

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Mr. SAMI VENKATACHALAM CHETTI:—" May I know whether there was any actual case of brain fag? "

* Rao Bahadur C. NATESA MUDALIYAR:—" Yes, but for the holidays they are enjoying they would have suffered from brain fag. Why, is there a High Court Judge, whom you do not find shattered in health? Have you not seen many of them entering service in their full bloom of youth, but emerging out of service completely shattered in health? Have you not seen even Judges coming from England hale and healthy, and returning home in broken health, and sometimes dying even on their way home? (Mr. Abdul Hameed Khan: ' Is it on account of their work? ') Yes, on account of their brain work. So, what I suggest is that they should be given a holiday in the middle of the week, say Wednesday. (Opposition cries of ' Oh! ') I say this is not only in the interest of the Judges but also the litigants. I request the Hon. the Law Member to seriously consider the matter. As I said, they have to sit every day from 10-45 a.m. to 4-45 p.m. pouring over file after file, sifting evidence, analysing them, pondering over them, hearing arguments and counter-arguments, taking the papers with them home in the evening and writing judgments after deep and long consideration. Does not all this involve strain? (Mr. Sami Venkatachalam Chetti: ' What about the Hon. the President? ' (Laughter.) Yes, he too has to sit every day from 11 a.m. to 5 p.m.: he needs rest. So the Council should sit only for five days a week if there is a necessity to sit more than a week.

" Then, Sir, coming to the constitution of the High Court, I am sorry to say, there has been no proper representation of various communities—no Muslim representation, no Indian Christian and no depressed classes representation. Among the fourteen Judges, there is not a single Muslim Judge. You cannot say now-a-days there is no Muslim candidate available, you cannot say there is no Indian Christian available and you cannot say there is no depressed class gentleman available. Even supposing such men are wanting, why not you take qualified candidates with high moral character and capacity from these classes into the lower cadres, train them up and finally elevate them to the Bench? Unless you do such a thing, you cannot expect to have communal harmony. While all over India there is class difference, we, in Madras, have not such a thing. Why? Because we are doing justice to the several communities. So, I request the Hon. the Law Member, if need be, to bring in Muslim Judges from Afghanistan or Turkey. (Laughter.) My opinion is that there are Muslim Judges available even in our land.

" Then, Sir, with regard to the appointment of High Court Judges, I am glad that the discharging of duties by the present Judges is very efficient and of a high order. I admire them for doing their work without caring for the frown or favour of anybody, and independent even of the Government. We see, Sir, I.C.S. Judges like Justice Reilly, Justice Jackson; Justice Wallace, Justice Spencer and Justice Ayling

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and others have and had been very popular. Hence, I would suggest Sir, that whenever the authorities recruit Judges from England, it is better that they are posted to districts with High Court Judges pay, so that they may be well known in the land before they become High Court Judges. After the Reforms, probably the post of a judgeship may not be attractive, and so in order that we may have the best type of men on the Bench, I would like very much some Judges from England are brought to our country. We will accommodate them in all possible ways.

“And then, Sir, with regard to the appointment of crown prosecutors and public prosecutors, under each of them there are a number of assistants. The Hon. the Law Member should see that they are taken from all the communities, so that all of them may get the necessary training and when the time comes they may be appointed to such posts. As it is, you are not giving opportunities to the members of various communities. Suppose the Government appoint a Muslim Officer, it will be an inducement to other Muslim advocates to gather round him and pick up experience. It is not that a Muslim Judge or any officer will encourage them but his presence is an encouragement to them. Similarly with regard to the editing of the Indian Law reports. It is only in the interest of the country I am putting forth these suggestions.

“And, Sir, above all these things, what about the appointment of District Munsifs? There were days when people from all classes and creeds were not available. Now there are any number of B.A., B.Ls. available in all communities. Of course the Hon. the Law Member may say that the appointment of District Munsifs vests in the High Court. Yes, I admit that, I only request the Hon. the Law Member to place the grievances of the representatives of the people before the Judges. I say that even if there be retrenchment those who are recruited last according to the communities should not be asked to go home.”

“Sir, I do not want to take up the time of the House any more. I am extremely sorry that our popular Law Member is going away. He has been throughout very courteous to us. (Several voices: ‘Hear, hear.’) He was one of us before he was elevated to that office. (Mr. Sami Venkatachalam Chetti: ‘Was he not a Justicite?’) (Laughter.) ‘What about you?’ Yes, I am glad to own that I am a Justicite. There is a feeling that he did not do anything for non-Brahmans. That statement is not true. Otherwise how can you account for the fact that some of the Members of the Legislative Council have disappeared. I am glad that I, who founded the democratic movement with my friends, live to see that the movement has given an opportunity to exhibit the talents of persons like the Hon. Sir M. Krishnan Nayar and our beloved Sir Usman who is to become the Governor of the Presidency.” (Hear, hear.)

* AHMED MEERAN SAHIB Bahadur:—“Mr. President, Sir, in rising to support the cut motion, I wish to make only a few observations. It has become a notorious fact that, ever since Sir Abrur Rahim was transferred from Madras to Bengal in 1920, no Muslim has been

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appointed to the High Court of Madras in spite of the repeated and persistent demand of the Muslim community and its representation on the floor of the House times without number. Indeed it has been a cry in the wilderness. Dozens of vacancies arose and they all have been filled up during the last 14 years, but it is incomprehensible as to why the claims of the Muslim community have not been recognized. It cannot be said for a moment at this hour of the day that there are no competent Muslim lawyers, who could adorn the Bench of the High Court, as efficiently and competently as any other non-Muslim, if not more. The Madras Bar itself can boast of more than two or three eminent Muslim lawyers who are well qualified both from the point of view of merit and standing, and from the point of view of legal acumen at the bar. It is not necessary for me to specify the names on this occasion. It has nowadays become usual with the Government to say that the appointment of a Judge to the High Court does not lie within their province, whenever questions are raised as to the justice and desirability of appointing a Muslim to this High Court. It does not require much argument on my part to prove the hollowness and unreality of this kind of plea, which is purely a technical device to escape responsibility for the moment. No one denies that Judges of the High Court are appointed in law by His Majesty's Government under the Letters Patent or Royal Sign Manual, but it is also a fact that the appointments are made virtually by the Secretary of State on the recommendation of the Local Government or the Governor, as the case may be. The Secretary of State does not know, nor has he any independent means of knowing who are the best men for the appointment as Judges in Indian High Courts. He, therefore, relies mostly on information and advice given by the Local Government. It is the Local Government or His Excellency the Governor who advises the Secretary of State in regard to the fitness of persons; and, in turn, the Local Government or the Governor, as the case may be, gets information with regard to the persons fit for appointment from the Law Department and the Chief Justice of the High Court. The Chief Justice is the person who can advise and furnish all information about persons and their competency and standing at the bar.

“It is his advice that is the guiding factor for the Government or the Governor as the case may be in sending up names to the Secretary of State for appointment as Judges of the High Court. Of course the Law Member as the Head of the Law Department adds the weight of his knowledge and experience to the advice tendered by the Chief Justice. If such is broadly the procedure that is followed in the matter of getting persons appointed as High Court Judges, it will be clearly seen that there is not the least force in the argument that the Local Government or the Law Member has nothing to do with appointment of High Court Judges. Whenever vacancies arise, all that the Law Member or the Governor has to do is to request the Chief Justice to select the best names from among the Muslim members of the bar and then send up the best names to the Secretary of State with the

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recommendation of the Local Government or the Governor as the case may be. If the Government has a mind to get one or two Muslims appointed to the High Court they can easily get it done. In this connexion it will only be futile and frivolous to suggest that there are no fit men among Muslims to be appointed as High Court Judges. If we take up the appointments made during the last 14 years and examine each case, it will not be long before one discovers that several of the appointees who held the office and retired after long years have not been in any way superior to several of the senior Muslim lawyers who are practising in the High Court to-day. In truth, it is a well-known fact that a good number of the Judges who have held and are holding office are only men of mediocrity and not far above the average, in legal and intellectual equipment. Recently a few vacancies have arisen and one or more are likely to arise in the near future. Even in connexion with these, it will be a matter of great regret and dissatisfaction if the claims of the Muslim community are not going to be considered and justice done to them. I therefore take this opportunity to request in all earnestness that the Hon. the Law Member should make a serious effort on the eve of his retirement at least to get a muslim appointed to the High Court Bench in the next vacancy that is soon to arise.

“Turning to another point, I understand that suggestions are being made and representations appear to have been received by the Government and the High Court to abolish the existing District Munsif's Court at Tenkasi. I may at once say, Sir, that such a step would be a disastrous one from more than one point of view. The Munsif's Court at Tenkasi has been in existence for the past 15 or 20 years and it cannot be denied that it is the most successful one in the whole of Tinnevely district, bringing in largest stamp revenue to the Government. The number of suits and other proceedings on the file of this Court more than justifies the continued existence of this Court. It is located at the most convenient centre and it is popular with all kinds of litigants who resort to this Court. Once before a similar suggestion seems to have been made by interested parties and the High Court and Government have rightly rejected the suggestion as being not in the interests of the administration of the justice. No fresh grounds can now be argued for its abolition. I would, therefore, request the Government not to give any heed to any suggestion for abolishing the Munsif's Court at Tenkasi.

“I wish to add a few words about the grievances of the assessors and jurors and about the delay in the disposal of election petitions in the mufassal. Considering the enormous inconvenience caused and the inordinate time taken in the matter of disposal of election petitions, it has become necessary that some steps should be devised to expedite election cases. I would request the Government to make the High Court issue definite instructions to the subordinate courts to dispose of election cases within a specified time, if the Government itself cannot do this. The Government can also in their turn issue instructions to its law officers not to permit unnecessary delay to take place

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in the matter of the disposal of election petitions to which the Government or its servants happen to be parties. With regard to the assessors and jurors I have to state that the present allowances paid to them for helping the courts in the administration of justice at great risk of personal inconvenience to themselves are very meagre and do not compensate the actual expenses incurred by them. In many cases the assessors and jurors go out of pocket when they attend the Sessions Court for long and tedious periods. It is fair and just that the present rate of allowance should be revised. Such revision will no doubt cost the Government a small extra amount but that is very negligible when we keep in view the services rendered by the jurors and assessors to courts of law.

“ With these few words I resume my seat.”

Mr. ABDUL HAMEED KHAN:—“ Sir, speaking on this Demand, any hon. Member would certainly advert to one of the most important needs which concerns it and that is with regard to the delay that is caused in the disposal of cases. My hon. Friends who have just spoken before me, both Messrs. Daniel Thomas and A. B. Shetty, quoted facts and figures to show how a case, after it is taken up by the Judges, takes more than a year or a year and a half for its being disposed of. I was told a few months back that a case which was instituted in 1915 was disposed of only recently this year. If it takes such a long time for cases being disposed of, one can easily understand to what an amount of expenditure the litigant public would be put. I am afraid I cannot apportion the blame to this or that authority. The defect lies in the system itself and unless it is revised and made possible for the litigant public to secure justice in a shorter time, I am afraid we will not be giving real justice to the litigant public. After all, people have developed some confidence in courts of law and they seem to think, very often rightly, if they go to courts of law they will get justice done. It is no doubt true that justice is secured to them in many cases. If justice is delayed, I am afraid justice is not fully done. Therefore, I would suggest that the Hon. the Law Member will look into this matter more carefully and see if the whole system is not revised in order to secure early justice to the litigant public. I have to state in this connexion that the dispensation of justice has become very costly and is becoming more and more costly what with the amount of court-fee stamps and what with the fees to lawyers owing to the continuance of cases for years together. We are keeping a very costly establishment. Of course the Judges ought to be paid sufficiently high in order that they may be above temptation and above corruption. But, all the same, I think that the salaries that we pay to High Court Judges are far higher than what obtains in any other part of the world. Along with the revision of other salaries I am sure the salaries to members of the judiciary will also be sufficiently reduced.

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“With regard to the question of Muslim representation in the Judicial branch, it is a very sore question. No doubt my hon. Friend, Mr. Natesa Mudaliyar, not only to-day but also on many other occasions, has been espousing the cause of the minority, especially of the Muslim community, and has already spoken about the non-appointment of a Muslim to the High Court Bench. My hon. Friend, Mr. Ahmed Meeran, has spoken at length with regard to our longstanding grievance. The Muslim community has been asking for the appointment of a Muhammadan High Court Judge for the last 14 or 15 years, but for one reason or another the Government have not found their way to make such an appointment. Year after year, Muslim representatives and other friends who sympathize with our cause have been advancing our claims and have been sending representations to the Government, but the Government throw the entire responsibility on the Secretary of State and say that the appointment was made by the Secretary of State. As my Friend, Mr. Ahmed Meeran, has stated that the entire responsibility cannot devolve upon the Secretary of State. Sitting far away from this country, about 7,000 miles, it is impossible for the Secretary of State to select any proper person for the High Court Judgeship unless he is advised by the Local Government. Of course if the Chief Justice is the legal authority who initiates this selection, I am sure that the Government of the Province as a whole has a hand in it, whether it is the Hon. the Law Member or His Excellency the Governor does not matter for us. We in this House can only ask the Hon. the Law Member to do justice to our community. Of course I know that in the case of a recent appointment to the High Court Bench, the Hon. the Law Member was utterly ignorant as to what happened and it was only subsequently that he came to know of it. If such a thing happens, we cannot entirely hold the Hon. the Law Member responsible. After all, it is the Government that are to be entirely blamed for not listening to our representations. The question of capacity, competency and efficiency can all be advanced, though not publicly, at least privately. If it has been found possible for the community to produce a gentleman who is going to become Acting Governor, certainly that community can say that it possesses persons who can become High Court Judges. There have been of late so many vacancies on the High Court Bench and appointments were made from all communities and even very recently the Government tried to get some European gentleman whose claims to the appointment were considered but who did not get it. But I understand that the appointment is likely to go to the very same gentleman for reasons best known to the Government. Such being the case, I see no reason why men from our community alone are not appointed and why we should be told that we have not got men who are sufficiently qualified and fit for the post.

“So far as other appointments in the High Court Service are concerned, I am afraid the authority in the High Court who has got the power of making such appointments is certainly more communal

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than anybody. It seems to me that that authority favours only one or two communities. It entirely ignores the existence of other communities. I do not know how to make that authority realize that there are other communities whose claims ought to be looked into and justice done to them. Even for the appointment of peons or daffadars or clerks, that authority seems to think that there are one or two particular communities from which alone it can make such appointments.

“ When that is the view of this authority I do not know, as long as it exists, whether there will be any chance for any other community. I understand that recently selections were made for District Munsifs. The selection was made by the High Court and twelve candidates were selected, but not one of them is a Mussalman. I ask: are there so many Mussalmans in the cadre of District Munsifs that it was impossible for the Government to select one more Mussalman. Were there any applicants for the post from Mussalmans and, if so, how many? Were there not Mussalman applicants who were quite as qualified as the applicants from other communities who have been selected? If there were such applicants, what exactly was the reason for ignoring the claims of Mussalmans. Last time only a few were selected and still the representation of Mussalmans in the cadre of District Munsifs is quite meagre. In these circumstances, I cannot understand what made the authority responsible for the selection ignore the claims of Mussalmans? Of course, the world knows how these selections are made and how things are done and I do not think it is necessary for me to explain here in this august body how these things are done. Unfortunately those considerations do weigh with the judges who make the appointments. However, I hope it will not always be the case. 4 p.m.

“ Sir, I understand that the Government are thinking of constituting a new City Civil Court and increasing the number of Judges there. I hope that the claims of the Mussalman community will be considered in that connexion. These are the many things which I thought I ought to represent to the Government on this occasion. I dare say that the Hon. the Law Member who is on the eve of retirement from his membership will kindly see in the short time at his disposal that representation is made to the proper quarters to recognize the claims of Mussalmans so far as appointments in the High Court are concerned. I think, Sir, I should take this opportunity of thanking the Hon. the Law Member for the kind courtesy that he has shown to Members of this House during his regime as Law Member and for all that he has done for the people of this Province.”

* MR. M. DEVADASAN :—“ Sir, I just want to make a few observations on the motion before the House. Justice is not impartially meted out in the mufassal, specially in the rural parts. The administration of justice in the villages is left in the hands of the village courts and the panchayat courts. With due deference to the Hon. the Law Member, I should say that greater reforms are necessary in the constitution and the working of the village and panchayat courts. I find from that

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administration report that 111 cases have been transferred from the village courts to other courts and 632 or thereabouts have been transferred from the panchayat courts to other courts by the District Munsifs under Section 20-A of the Village Courts Act. Several petitions are filed every day for the transfer of cases from these courts and for setting aside under section 73 of the Village Courts Act of the decrees passed by these village courts and panchayat courts. There is no mention about the number of cases in which the decrees have been set aside under section 73. The people in the mufassal complain that justice is not meted out impartially as the village munsif or the members of the panchayat side one faction or the other in the village. Thus there is miscarriage of justice. In the Government Order issued by the Government on the administration report, the Government are pleased to observe that village courts and panchayat courts are becoming more and more popular. I should say Sir, that this statement has been based on the reports furnished by the subordinate courts. But, if we examine the matter carefully we find that many petitions are filed in the District Munsifs' Courts either for the transfer of cases or for setting aside decrees passed by village and panchayat courts whether justice is done to the clients or not. That shows that something is needed to improve the administration of justice in the villages.

"With regard to the constitution of these courts, we find that they are mostly composed of the influential sections of the people. I put several interpellations on this point. I have to say that these courts are generally constituted in such a way as to be prejudicial to the interests of the minority communities. I hope that before the Hon. the Law Member lays down his office, he will make some provision for the adequate representation of all communities on these village courts and panchayat courts.

"I now want to say a few words about the administration of criminal justice. Recently, Sir, officers have shown some apathy and indifference in trying the cases coming before them. Some security cases are not dealt with in the manner in which they ought to be dealt with. They have been thrown out. Though I am a vakil, I should say that in the interests of justice, people who are brought before Magistrates for proceedings under the security sections of the code, have to be warned and bound over so that they might not do any mischief. Some Police officers complained to me that some security cases were thrown out by the Magistrates although those cases deserved some action to be taken. Some Magistrates do not care to do more work than they like and they do not go into the petitions presented to them. Petitions under section 145 of the Criminal Procedure Code are presented before Magistrates; but they do not take cognizance of those petitions, nor do they send them to the Police for proper enquiry on the other hand they dismiss the petitions and ask the people to file criminal complaints if they are so advised. Since the Magistrates neglect this kind

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of work, criminal offences both cognizable and non-cognizable are committed. If people are warned in time, they will not occur.

“ Sir, I have to congratulate the Hon. the Law Member for one thing he has done for us and, if I do not do that, I will be failing in my duty. In the past there were not enough members of the Depressed Classes on the bench courts. Now he has been kind enough to instruct District Magistrates to nominate members of the depressed classes to these courts. I must also thank the Law Secretary for having acceded to the request of the members of the Depressed Classes to appoint them as bench magistrates. There are enough men among the Depressed Classes competent to be bench magistrates and I hope he will issue necessary instructions to District Magistrates to see that the claims of the Depressed Classes and other minorities are not neglected in the least when bench courts are constituted in the future.

“ Sir, I have given notice of some cut motions, some of which have already been dealt with by my hon. Friends and I do not want to refer to them again. I shall, therefore, confine myself to a few only which have not been touched upon by others. In Tinnevely, the offices of Public Prosecutor and Government Pleader are held by one and the same person, while in other districts the offices are held by two different persons. I ask the Hon. the Law Member to see that in future the two appointments should go to two different persons and not be held by one and the same person. There is a feeling among the minority communities in Tinnevely that their claims have not been considered in making the appointments of Public Prosecutor and Assistant Public Prosecutor in the past. I hope that the Hon. the Law Member will give due regard to the claims of these communities in making future appointments to these posts.

“ I have given notice of another motion also on a subject which was often dealt with before—the separation of the executive from the judicial functions. Several other hon. Members also have given notice of a similar motion. This is a vexed question—the same officer discharging both judicial and executive duties. It gives a lot of trouble not only to the public but also to the members of the bar who practise before Magistrates. These executive officers camp in different places in the district and therefore it causes not only a good deal of expense to the litigant public but also considerable trouble to the members of the Bar. Therefore, it is high time that the two functions should be separated from each other and vested in different officers.

“ Before I close, I wish to say that the members of the Depressed Classes are very grateful to the Hon. the Law Member for the sympathetic consideration he has given to their claims for appointments as bench magistrates and others. I must also observe that though he was old in age, he was active as a young man. During his regime he came twice to Tinnevely and inspected the courts. I wish him long life and success.”

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B. POCKER SAHIB Bahadur:—"Mr. President, Sir, I shall confine myself to five minutes as I undertook to do before you in private. I want to urge on the Government the necessity of issuing a Government Order to the effect that all courts in the Presidency should adjourn for two hours from 1 p.m. to 3 p.m. or 12-30 p.m. to 2-30 p.m. (not 2 p.m. as is put on the notice paper) according to the needs of the locality on all Fridays with a view to enable the parties, witnesses, advocates or the presiding officers of the courts who may happen to be Muslims to attend Jumma service. Sir, I make this motion on account of the difficulty we, Mussalmans, have been experiencing all these years. The courts rise at about 2 p.m. or so on Fridays as also on other days. The High Court rises at 1-45 p.m. By that time the Jumma prayer is over; it is only three-quarters of an hour that is allotted for lunch; during that time it is impossible for us to attend to Jumma prayer. Though the Hon. the Law Member is not a Muslim, I know he is quite well acquainted with the religious tenets of the Muslims and with the binding nature of the Jumma prayer. It is incumbent on every Muslim to attend to Jumma prayer unless he is disabled in some way or other. I know that the Government have been affording facilities to Muslims in these matters. This difficulty has not been solved by the Government, simply because the difficulty experienced by lawyers, by parties and by witnesses who attend the courts, has not been brought to the notice to the Government. In view of this inconvenience, the Government have issued a Government Order enabling the members of the staff of judicial courts to take two hours rest for attending to the Jumma prayers. Since the Government consider that it is the religious duty of the Muslims to attend to Jumma prayers, they have given two hours' time to the establishments of judicial courts to fulfil this religious duty. Therefore I do not see any reason why the Government should not recognize the same duty cast on the other Muslims, advocates, parties and witnesses or even judicial officers. No doubt presiding officers have got the liberty of rising whenever they like to accommodate themselves. But advocates, parties and witnesses feel this inconvenience. I know of many cases where Muslims have to choose between their religious duty of performing this prayer or attending to cases which are to be taken up during this period. I think the Government will relieve us from this difficult situation. After all, what I ask is only about an hour more during lunch time, on one of the five or six working days in a week. I do not think that would materially affect the working of the courts; it would not affect the efficiency of the courts. I will go to the extent of saying that, if any holiday is to be cut, it may be done. I would appeal to the Government that this convenience should be afforded.

"One other matter I wish to refer to. It is an urgent necessity to provide sitting accommodation for parties, witnesses, etc., who have to visit the courts in the mufassal. You know that there is such accommodation for the public in every court in the High Court. You do not find any such accommodation in the courts in the mufassal. However

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respectable the parties or the witnesses may be, they have either to loiter about in the courts or they have to be standing or they have to squat on the floor. I do think that the Government would realize the necessity of providing such persons with seating accommodation, as it is done in the High Court, in the Small Cause Court and other courts in the city. It may cost a little to the Government but I think that is an expenditure worth incurring, in order to remove the inconvenience felt by the public.

“ I wish to say a word or two about the necessity to provide for an overbridge connecting the Small Cause Court premises with the High Court buildings. (Voice: ‘ The legal practitioners will pay.’) If it is shown that these practitioners do not pay sufficiently to the Government in various ways by payment of various taxes, it will be time to consider the question. Certainly it is very essential to the convenience of the legal practitioners who have to attend to work both in the High Court and in the Small Cause Court. I find, there is a small bridge provided between the library room and the corridor in front of the Chief Justice’s room; it is only 2 cubits. I do not know what purpose it serves. I do not see any reason why the Government should not seriously consider the question of providing an overbridge between the High Court and the Small Cause Court premises as there are so many practitioners who have got work in both the Courts. It is all the more necessary as the City Civil Court has been recently transferred from the High Court buildings to the new Small Cause Court buildings. Therefore there is much of congestion in the latter building.

“ There is another point. That is about the necessity to have an Additional District Munsif’s Court at Tinnevely. At present the litigant public who are living in the vicinity of Tinnevely town are asked to go 20 miles to Ambasamudram and file their suits there. That, I submit, is a great hardship. If an enquiry is made, the Government would be convinced that this demand is a very reasonable one. I do not propose to take much more time in view of the undertaking I gave.”

* The Hon. Diwan Bahadur Sir M. KRISHNAN NAYAR:—“ Sir, I shall try to be as brief as possible, though there is a large number of points referred to by my friends, which necessitate my replying to at least the more important of them. My friend, Mr. Sreshta, referred to the question of separation of judicial from executive functions. That is a very hoary question. I remember that, when I was at the bar, when I was a very young man, this was one of the questions constantly dealt with both on the platform and in the Legislative Council. As my friend, Mr. Sami Venkatachalam Chetti, reminds me, I was agitating this question, when I was a non-official Member, on the floor of this House. Whatever it may be and however desirable it may be, I may tell my friends that it is beyond this Government to take any action in this matter. As a matter of fact, a small committee was appointed some years ago by this Government to go into this question and they recommended some reforms though not of a very extensive nature. A

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report regarding the recommendations of that committee was sent up to the Government of India. Subsequently this question was being agitated on the floor of the Council of State and also on the floor of the Legislative Assembly at Delhi. In the year 1928 or so, a reply was given to a question asked in the Council of State on this matter. That reply was to the effect that the Secretary of State had ruled that this question should be treated as an All-India one, and that no Provincial Government could therefore treat this question as Provincial matter. A despatch to that effect has also been forwarded to this Government by the Government of India. What they stated on the floor of the Council of State was that the Statutory Commission presided over by Sir John Simon had not submitted their report and that until that report was submitted, the Government of India themselves would not move in the matter. I am not using their words. That is the substance of what they said on the floor of the Council of State. They themselves could not take any action and the report of the Statutory Commission was awaited. I find by a reference to the reports of the various Round Table Conferences that there is no reference to this question in those reports. But there is a reference to this question in the report of one of the Subject Committees of these Conferences. As far as I can recollect—I speak subject to correction—I think that there is no reference to this question in the White Paper also. In any case my point is that it is beyond this Government to take any action in this matter.

“Then my friend, Mr. Sreshta, went on to say that District Munsifs should be appointed by competitive examinations. I am afraid that I cannot agree with him in this matter. My friends who are members of the bar will, I believe, agree with me when I say that a Munsif's appointment requires very high qualifications. The capacity to administer Civil Justice as District Munsif does not depend upon the capacity to pass competitive examinations. Experience at the bar is necessary; knowledge of human nature is necessary; all these things come to a person who has been at the bar for some time. I think that the present system of recruiting District Munsifs is very much better than the system recommended by my friend, Mr. Sreshta. It will be remembered that some of my friends urged that the power of appointing District Munsifs should be transferred to the Madras Services Commission, and that it should be taken away from the High Court. I entirely agree with my friend, Mr. Pocker, in thinking that that should not be done. The Madras Services Commission will not be the proper body to appoint District Munsifs; they will not be in a position to know the comparative merits of the applicants for the posts of District Munsifs. The Judges of the High Court also may not be able to know the comparative merits of all the applicants. But the High Court is in a better position than the Madras Services Commission to know the comparative merits of the applicants and it will be remembered that even in England where appointments for the public services are generally made by the Public Services Commission, the appointment to judicial posts is not in the hands of the Public Services Commission. Of course, the Judges of

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the Supreme Court are appointed by His Majesty; but County Court Judges are appointed, not by the Public Services Commission, but by the Lord High Chancellor who is the Head of the Judiciary in England.

“ Then my friend, Mr. Sreshta, referred to the delay in the disposal of cases; many other friends also referred to this point and to the delay in execution of decrees. There is perhaps some justification for the complaints of my friends. But what I submit to this House is this; the High Court and the Government have done and are doing all in their power to minimize the causes of this delay. Reference to the delay in the disposal of cases in the High Court also has been made to-day on the floor of this House. So far as the High Court is concerned, the Government have, on the recommendation of the High Court recently, increased the number of permanent Judges by two and, in addition to this, they have permanently appointed an officer called the Master who discharges many judicial functions which were till then being disposed of by the High Court Judges themselves. I believe the Official Referee also attends to judicial functions. In addition to this, as my friends are aware, a Bill has been introduced into this Council for enhancing the pecuniary jurisdiction of the City Civil Court to Rs. 10,000, and when this Council passes that Bill, part of the original jurisdiction of the High Court will be transferred to the City Civil Court. That will lead to more speedy disposal of cases not only on the Original Side of the High Court but on the Appellate Side also. After this Bill is passed, another Judge will be appointed to the City Civil Court. I may say that the Government will then bear in mind the suggestion of my friend, Mr. Hameed Khan, to appoint a Muhammadan gentleman to that post.

4-30
p.m.

“ With reference to the suggestion of my friend, Mr. Sreshta, that there must be some other authority than the District Munsifs and Sub-Judges, to dispose of execution cases, I am afraid that I cannot agree with him. As lawyers in this House know, in execution of the decrees, very often more complicated questions of law than in the disposal of cases themselves arise, and it must be trained judicial officers that should be entrusted with the power of disposing of them.

“ My friend, Mr. Sreshta, again referred in very strong terms to the activity of one of the High Court Judges in advocating birth-control; but I was glad to observe that he himself referred to him as a very respected person and a highly respected Judge of the High Court. He blamed him for taking part in the controversy relating to birth-control. I believe that my friend, Mr. Sreshta, will agree with me—and I am sure that all my other friends in this House will also agree with me—when I say that whatever his opinions on birth-control may be, his duties in connexion with his office as a Judge are not in the least affected by his opinions (Hear, hear). That is the only matter, I think, with which this House is concerned. I believe that Mr. Shetty also replied to Mr. Sreshta and said that his private opinion on matters, which are not in any way connected with the decision of cases, is not the concern of this House.”

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Mr. M. S. SRESHTA :—" But he is doing propaganda work."

The Hon. Diwan Bahadur Sir M. KRISHNAN NAYAR :—" In any case, as I said, all that this House has to do with him is with his work as a Judge and I am glad that my friend himself has paid a compliment to his capacity, his probity and his efficiency as a Judge.

" My hon. Friend, Mr. Shetty, also referred to the delay in the disposal of cases. I have answered that question already.

" My friend, Mr. Shetty, again made a suggestion that the post office may be made the medium of serving processes to the litigant public. In fact, Mr. Shetty himself and some others have stated that this function of serving process is an important one. I do not think that the post office will be a better agency than the paid process peons for serving these processes. I do not mean to say that the process peons are an ideal set of persons. As a matter of fact, there are very few, if any, ideal persons in the world. The courts do exercise as much control as possible over these process-servers. In any case, I think that the post office cannot be a much better agency for serving the processes on the public."

Mr. BASHEER AHMED SAYEED :—" But the post office is now being used."

The Hon. Diwan Bahadur Sir M. KRISHNAN NAYAR :—" As a lawyer himself, my friend knows very well that sometimes when questions relating to the receipt of registered letters and registered replies come up before the courts, the question of the integrity of the post office peons also arises. At any rate, that was my experience in old days. I do not know whether the post office peons have improved since then.

" Then my friend, Mr. Daniel Thomas, referred to various subjects. He referred particularly to the need for using section 562 of the Criminal Procedure Code. I agree with him. It is really desirable that that section should be used to a larger extent than now. The Government have drawn the attention of the Magistrates to that aspect of the question.

" My friend then wanted to know how mercy petitions that come up before the Government are disposed of. The general principle on which these mercy petitions from condemned prisoners—prisoners sentenced to be hanged—are disposed of is this. The Government take it for granted that the findings of fact and law arrived at by the High Court are correct. It will be wrong on principle for the Executive Government to differ on findings of fact or on questions of law, from the decisions of the highest tribunal in the land. All these questions of death sentences have to go to the High Court. So, the findings of fact and of law are always taken by the Government as correct. Then the Government see whether there are any special considerations for them to use their prerogative of mercy in the case of the petitioners. For instance, there may be cases of extreme tenderness of age of persons sentenced to be hanged. According to the Indian Penal Code, the Judges

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of the High Court are bound to give the death sentence in many cases. If the accused happens to be a very young boy of 17 or 18, that may be a circumstance to be taken into consideration by the Government. Again, there may be cases of sex to be considered. Suppose a woman is sentenced to be hanged, the Government take her sex into consideration and may exercise their prerogative of mercy for the commutation of the death sentence into one of transportation for life. That is generally the policy that is followed by the Government. With reference to procedure, these mercy petitions are always treated as urgent in the Secretariat. There is also a standing instruction to the Superintendents of Prisons that no person who has been sentenced to be hanged should be hanged till the mercy petition that he may have submitted to the Local Government or to the Government of India is disposed of. That is a standing instruction, and that has been repeated with greater details after the recent unfortunate occurrence in the Punjab."

MR. SAMI VENKATACHALAM CHETTI :—" What about the recent Government Order with regard to these mercy petitions? "

THE HON. DIWAN BAHADUR SIR M. KRISHNAN NAYAR :—" As a matter of fact, that is based upon the orders of the Government of India. As I said, the Government always treat these mercy petitions as very urgent, and if the Local Government refuse to interfere, they forward the petition addressed to the Government of India, to that Government. If, on the other hand, the Local Government themselves interfere with the death sentence, then they do not forward the mercy petition addressed to the India Government, to that Government.

" My friend, Mr. Daniel Thomas, condemned the jury system. I think that last year also he referred to the same question. (An hon. Member: Every year.) My friend may be right or may be wrong; I am not in a position to say. But it is a very difficult question for a Local Government to tackle. This is a system which is embodied in the Criminal Procedure Code by the Government of India, and this Government cannot therefore interfere with it. Though there may be aberrations now and then, as my friend stated, on the whole I am inclined to think personally that the jury system is after all not bad. My friend might have had in his mind, when he referred to this matter, the recent occurrence in his district where some jurors in connexion with a case were charged with corruption. That matter has come to the notice of the Government. Anyway, Sir, on the whole I think that the present system is working satisfactorily.

" My friends, Mr. Pocker and Mr. Devadasan, and also Mr. Daniel Thomas, I think, referred to the abolition of the Palamcottah Munsif's court. That court was abolished in 1931 as a matter of retrenchment, on the recommendation of the High Court and in accordance with the request of the Tinnevely Bar, the whole of the territorial jurisdiction of the Palamcottah Munsif's court was transferred to the Tinnevely Munsif's court.

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“ With reference to the question of the distribution of the territorial jurisdiction, it is a matter which, under the Civil Courts Act, is entirely within the jurisdiction of the High Court; and the High Court, I am sure, will go into the matter very carefully and do what is necessary.

“ Some other friends suggested that it was under contemplation to abolish the Ambasamudram Court or the Tenkasi Court. There is no such question before the Government now.

“ I may also refer to another important matter referred to by my Muhammadan friends, i.e., the need for employment of Mussalmans on a larger scale in the judicial service, and particularly the need for the appointment of a Muhammadan Judge in the High Court. As I have already submitted to this House, and as Mr. Hameed Khan himself anticipated, the Local Government have nothing to do with the permanent appointment of High Court Judges. The appointment of permanent Judges to the High Court is made by the Secretary of State on the confidential recommendation of His Excellency the Governor and His Excellency the Governor is not bound to consult his Colleagues in the Government. Of course he has other sources of information with reference to the candidates available. I shall however, bring these representations to the notice of His Excellency, and I may say that with that sense of fairness and justice which characterises all his actions, His Excellency will do what is proper in this matter.”

Mr. SAMI VENKATACHALAM CHETTI:—“ Why should we vote the money? ”

The Hon. Diwan Bahadur Sir M. KRISHNAN NAYAR:—“ I may tell my friend that the pay of a High Court Judge is non-votable. We have no right to vote for or refuse it.”

Mr. SAMI VENKATACHALAM CHETTI:—“ What about his establishment? ”

The hon. Diwan Bahadur Sir M. KRISHNAN NAYAR:—“ There is no question of appointing Mussalman gentlemen to the establishment now.

“ I am afraid, Sir, that I am exceeding my time. I shall be very short, Sir. There are many other points referred to by my friends, which, I am sorry, I am unable to touch upon now in any great detail.”

B. POCKER SAHIB Bahadur:—“ What about Friday adjournment? ”

The Hon. Diwan Bahadur Sir M. KRISHNAN NAYAR:—“ With reference to Friday adjournment, the High Court itself has issued a circular to all the Civil Courts in the Presidency, requiring that one hour's interval should be given on every Friday to every Mussalman employee of the Court. If a request is made to the presiding Judge of the Court, I have no doubt whatever that the necessary interval will be given to the Muslim practitioners, parties and witnesses also. In any case, Sir, I shall forward the suggestion to the High Court.

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“ There are many other things referred to by my friends, but I think my friends will excuse me. . . .”

Mr. M. S. SRESHTA :—“ What about the appointment of a committee? ”

The Hon. Diwan Bahadur Sir M. KRISHNAN NAYAR :—“ My friend's suggestion was that a committee should be appointed to go into all these questions relating to the administration of justice. I am afraid, Sir, that a committee will not be the proper machinery for going into these questions. The proper machinery would be the High Court itself. Anyway, my friend's suggestion will be forwarded to the High Court.

“ Before I sit down, Sir, I wish to refer to some personal references made to me by many of my friends here, namely, Messrs. Sreshta, Natesa Mudaliyar, Daniel Thomas, Hameed Khan, Devadasan and others. I feel very grateful to them for these personal references. As my friends stated, this is the last time when I shall speak here on Budget discussions. I shall have, no doubt, further opportunities to speak on the other demands, but still, as they have kindly referred to me personally, I wish to say that I am very thankful to them for those remarks. I am also thankful for the co-operation that I have always had from the Members of this Legislative Council, and it will be a matter for very pleasant recollections to me hereafter that I have had the privilege and the happiness of receiving such hearty co-operation from all my friends. Though, as I said, this is not the last Demand of the Budget on which I shall speak, yet, I may take this opportunity of tendering my heartfelt thanks to the Law Secretary, his Assistant Secretary and the whole establishment working in the Law Secretariat and to the other Secretaries for helping me whole-heartedly in the discharge of my duties.”

* Mr. M. S. SRESHTA :—“ Mr. President, Sir, I am thankful to the Hon. the Law Member for having practically dealt with all the points that were raised in the course of the debate by myself and other speakers. May I be permitted to say something in reply to what he said regarding the Judges of the High Court.” 4-45 p.m.

* The Hon. the PRESIDENT :—“ We have already exceeded the time allotted for this Demand. I don't think it will be in order to go on discussing once again.”

The cut motion was, by leave, withdrawn.

The Demand was put and carried and the Grant was made.

DEMAND XIII—JAILS—RESERVED.

* The Hon. Diwan Bahadur Sir M. KRISHNAN NAYAR :—“ I move—
‘ That on the recommendation of His Excellency the Governor the Government be granted a sum not exceeding Rs. 20,22,900 under Demand XIII—Jails—Reserved ’.”

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* Mr. G. R. PREMAYYA:—" Mr. President, Sir, I move—

'To reduce the allotment of Rs. 34,800 for Jails—Superintendent—Pay and Allowances of Officers and Establishments, by Rs. 100.'

"The policy of Jail administration should be more of corrective and preventive nature. From the report of administration of jails one can easily find that there are three classes of prisons, viz., district jails, borstal schools and special jails. I think you have separate wards for females. We are in the dark as to whether the treatment accorded to them is satisfactory or not. I suppose that there are no female superintendents. Even if there are as usual, they will be assaulted for the reasons which I am going to show. Not much has been said about the Vellore Presidency Jail for Women.

"Generally a convict will be released by a special order of the Government, on the recommendation of the Advisory Board, on medical recommendations and under scheme of premature release. Of these, Sir, I wish to deal with the advisory boards and medical recommendations. I know that advisory boards are constituted for the purposes of advising Government in matters connected with convicts. I have seen the report and was also given to understand that one or two gentlemen had been selected as life members as it were of the board and will continue to be there for eternity if God gives them longevity. If Government are earnest about the co-operation of non-officials, they will be well-advised to choose trustworthy non-officials as members of the board in different areas. These boards though they are constituted with good intention will not be appreciated by the people at large until they are above criticism, and so I say non-officials of different areas should be appointed to the board.

"As regards medical recommendations to which greatest importance is attached when discharging prisoners on medical ground, I do not know what to say. The Government know full well that a certain prisoner is seriously ill. Medical officers are in attendance on the sick man, diagnose the disease and if they expect that the disease is going to be a dangerous one why not they put the patient in the hospital and give him good treatment? To say that three of the persons whose release on medical grounds was sanctioned by the Government, died before orders were received is very deplorable indeed. This does not speak very high of the department. If the report explains to us who the dead persons are and their history, we may be in a position to know the actual truth.

"The administration report shows an increase in the number of convicts who are engaged in agriculture. I wonder how these people are treated. The rules allow for newspapers and some books in the case of educated convicts. Many books of a very high order have been written by persons in jails. Bunyan's Pilgrim's Progress is an example. Pandit Jawaharlal Nehru and Mahatma Gandhi have written wonderful books. Although these agriculturists are convicts, it is not to be forgotten that

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they have likes and dislikes and are human. They need some manual and brain work as well during their stay in jail. It is the duty of the Government to change them mentally, morally and socially. The abusive language—I wish the Hon. Member to bestow his particular attention to what I am saying—used by the authorities towards the convicts and the brutal treatment meted out to them make the convicts more desperate and rude; on the other hand, if the authorities treat the convicts kindly, as far as the Jail rules permit and try to change them, they will certainly yield; they are not worse than beasts and can be changed. Their outlook on life may be changed and their general level of intelligence can be raised by means of magic lanterns and cinemas. It may be of advantage to these criminals if small moral stories are shown on the picture. Penal colleges in the western countries, Denmark, Germany, Holland and Austria are following this method. People who are once convicted must be in a position to share the responsibility of citizenship just like any other man after they are discharged. In the West, in the case of convicts who had been agriculturists, prior to conviction, they are taught gardening, bee-keeping, piggery, sericulture and other subjects so that on discharge they may be able to start business rightaway. This is not done in our country. Prisoners' Aid Society which finds job for the discharged prisoners is only having undue advertisement. The prisoners find themselves lost to the world when they come out of jail. If the western method of reformatory is adopted there will be no difficulty for the prisoner to earn his bread on his release from jail. The petty jail officials must behave better. Indecent language should not be used against convicts. As regards first offenders, the West has separate colonies for them; and in some colonies a separate section is given away to those who are sentenced for a short term. Habituals are not under any circumstance kept in close touch with first offenders or juveniles. I hear that there is a Bill before the Government of India to introduce a system of probation for first offenders. I believe that this measure is under preparation and strict examination for a long time, and no one knows when it will be passed into law. If there is to be any reform by the India Government, it is in this department that is most needed. Jail policy requires to be completely and entirely changed and reorganized on the lines of the western system of reformatories. Corporal punishment is being awarded to C class civil disobedience prisoners. Nowadays, this form of punishment is unheard of in the West. Whipping also is awarded in certain cases, say in the case of an assault on the Superintendent. I say that these assaults are the outcome of bad treatment given by the Superintendents. The prisoner knows that he is helpless, and he has also no way to defend himself against ill-treatment and he cannot brook abusive language. The man grows desperate and resorts to assault. In such a model institution as the Madras Penitentiary, for small offences whipping is awarded. The Superintendent behaves like a despotic monarch. The convicts are utterly helpless; they cannot appeal to anybody and even if they do, none will go to their rescue. Who knows what is going on between the four walls of each jail? What I say is that by a more humane treatment, we can put a stop to many offences against jail discipline.

[Mr. G. R. Premayya]

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“ In certain self-governing countries, the ruling parties put their political enemies in jails and when the opposite party comes into power they in turn put their political enemies in jail. Let us now presume that we have self-government. We know that if we behave improperly, we shall be put into jail. If we come to power in the next elections, we will put some people in jail and the first of such persons will be the Hon. the Law Member who refused to give buttermilk to C class civil disobedience prisoners. He must have known that buttermilk is not a luxury and I know of several cases in which convicts get ill due to non-supply of buttermilk. I am neither a Congresswallah nor one who sympathises with the movement; I cannot see eye to eye with them. But I deprecate this attitude of revenge and as one who sincerely wishes for the betterment of the Indian nation, as one who would like to see the Indian nation, getting *swaraj*, I strongly criticize the present system of jail administration and sincerely wish that the Government should in the near future adopt the western method of reformatory. By so doing, I think the Government will be automatically putting a stop to a lot of trouble.”

At this stage the House adjourned to meet again on Monday, the 19th March 1934 at 11 a.m.

R. V. KRISHNA AYYAR,
Secretary to the Legislative Council.

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TRUTH ALONE TRIUMPHS